

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Appropriate Framework for Broadband)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities)	
)	
Universal Service Obligations of Broadband)	
Providers)	
)	
Computer III Further Remand Proceedings:)	CC Dockets Nos. 95-20, 98-10
Bell Operating Company Provision of)	
Enhanced Services; 1998 Biennial Regulatory)	
Review – Review of Computer III and ONA)	
Safeguards and Requirements)	

**REPLY COMMENTS OF THE NATIONAL CABLE &
TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby replies to the comments submitted in response to the Commission’s *Notice of Proposed Rulemaking* in the above-captioned proceeding, specifically with respect to the question of whether universal service contribution obligations should be extended to providers of broadband Internet access.¹

DISCUSSION

Numerous commenters agree with NCTA that the Commission should carefully scrutinize the current universal service program and address certain threshold issues before making a decision to expand the scope of contributors.² For example, the Illinois Commerce

¹ *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*; CC Docket No. 02-33, CC Dockets Nos. 95-20, 98-10; *Notice of Proposed Rulemaking*; FCC 02-42 (rel. Feb. 15, 2002) (“*Wireline Broadband NPRM*”).

² Charter Comments at 29; Comcast Comments at 14-16; Monet Mobile Networks Comments at 8-9. *See also* Allegiance Comments at 66-74 (discussing threshold questions Commission must answer).

Commission suggests that the Commission would be better served by “wait[ing] to initiate this inquiry, focusing at present on promoting broadband deployment and making other changes to the universal service contribution mechanism.”³ In the same vein, other commenters recommend that the Commission resolve the issues raised in the *Cable Modem Services NPRM* before deciding whether to impose a USF contribution requirement on providers of cable modem services.⁴

Like NCTA, other commenters note the numerous pending proceedings in which the Commission is considering whether and how to reform various aspects of the current universal service program. These commenters caution that the conclusions the Commission reaches in those proceedings could eliminate the arguments for extending the universal service contribution requirement to all providers of facilities-based broadband Internet access services.⁵ The number and breadth of comments submitted on this and other related issues make clear that there must be a thorough review of the universal service program before serious consideration is given to expanding the current scope of contributors.

³ Illinois Commerce Commission Comments at 32-33.

⁴ See, e.g., EarthLink Comments at 38 n.88 (noting that if the FCC’s *Cable Modem Services Declaratory Ruling* stands, cable operators will be neither mandatory nor permissive contributors to the USF and the FCC’s inquiry would appear to be “just hypothetical” at this time); Allegiance Comments at 70 (stating that because the FCC has excluded the issue of the regulatory classification of non-wireline broadband Internet access services from this proceeding, it is impossible to calculate the impact of such classifications on the sufficiency of contributions to the USF).

⁵ See, e.g., Sprint Comments at 18 (arguing that adopting a connections-based recovery mechanism could ensure the collection of sufficient funds without broadening the types of services required to contribute); WorldCom/Competitive Telecommunications Association/Association for Local Telecommunications Services Comments at 83-85 (noting that FCC needs to address whether ILECs and other carriers should contribute under current revenue-based scheme or a connections-based scheme); California Public Utilities Commission at 46-47 (noting that reform of the current contribution methodology might alter analysis of proper treatment of wireline broadband Internet access services); Information Technology Association of America (“ITAA”) Comments at 46 (explaining that adoption of connection-based methodology would obviate concerns about long-term sufficiency of USF).

The “regulatory parity” rationale advanced by several incumbent local exchange carriers⁶ is not, in and of itself, a sufficient basis for imposing a USF contribution requirement on all providers of facilities-based broadband services in the absence of a finding in a comprehensive proceeding that such a requirement is otherwise in the public interest.⁷ As NCTA demonstrated in its comments in the *Cable Modem Services NPRM*, the very different regulatory regimes imposed on the cable and telephone industries reflect differences in their history, the manner in which they offer their services, and their technology.⁸ Regulation of DSL is not itself a public policy justification for imposing similar regulation on cable modem service. Regulatory parity, if it means subjecting cable modem service to additional regulatory burdens, will only raise the cost or lower the quality of high-speed access from *all* providers, slowing down the affordable availability and the demand for this service.⁹

If anything, considerations of parity argue against imposing additional financial burdens on cable operators while local governments continue to press their claims that they are permitted to impose some sort of franchise fee on high-speed cable Internet services.¹⁰ As Comcast correctly points out, sanctioning “franchise fee obligations [for cable operators] that do not apply to telephone companies . . . would inevitably affect the determination as to whether it is

⁶ BellSouth Comments at 31, SBC Comments at 41-44, Verizon Comments at 42-45, USTA Comments at 3, 13, Allegiance Comments at 69.

⁷ See ITAA Comments at 46-51 (arguing that concerns about competitive neutrality do not justify imposing USF contributions on ISPs.)

⁸ *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, NCTA Comments at 36-42 (filed June 17, 2002).

⁹ *Id.* at 43.

¹⁰ See Comments of the Alliance of Local Organizations Against Preemption, CS Docket No. 02-52 (filed June 17, 2002).

competitively neutral to impose universal service contribution requirements on all Internet service providers.”¹¹

Other commenters also urge the Commission to consider the effect that requiring USF contributions from providers of all facilities-based broadband Internet access services could have on the Commission’s goal of promoting broadband deployment. For example, Charter notes that imposing such a requirement on cable modem services would hinder the rapid deployment of broadband facilities and services.¹² The Public Utilities Commission of Texas agrees that the additional financial burden could create barriers to the deployment of advanced services rather than encouraging their deployment.¹³ Any such negative effect on broadband deployment is precisely the type of cost that the Commission must weigh as it evaluates whether to require all facilities-based providers of broadband Internet access services to contribute to the USF.

Finally, many commenters express apprehension about the negative effects of imposing a USF contribution requirement on nascent services,¹⁴ reinforcing NCTA’s concerns about the effect of such a requirement on the deployment of IP telephony.¹⁵ These comments emphasize that any proposal to expand the contribution obligation must consider the costs as well as any

¹¹ Comcast Comments at 18.

¹² Charter Comments at 4-9.

¹³ Public Utilities Commission of Texas Comments at 8.

¹⁴ *See, e.g.*, Hughes Network Systems Comments at 3-4 (arguing that it would not serve the public interest to impose a USF contribution requirement on satellite operators during the infancy of their satellite offering); SES Americom Comments at 3 (stating that satellite-delivered broadband Internet access services are neither widespread nor competitive with alternative forms of delivery and requiring satellite operators to pay USF charges will further disadvantage and delay introduction of this delivery mode); Wireless Communications Association Comments at 3 (arguing that wireless broadband technology is nascent and providers should not be required to contribute to the USF); Charter Comments at 26 (arguing that new services like cable modem service should be free from legacy regulation).

¹⁵ NCTA Comments at 6-7.

benefits. In the case of IP telephony specifically, a contribution requirement is inappropriate given the nascency of the service.¹⁶

In any event, before the Commission considers whether IP telephone services should be required to contribute, it would have to determine either that IP telephony is a telecommunications service or that it includes interstate telecommunications, which the Commission has not yet done.¹⁷ And if it determines that IP telephony is telecommunications rather than a telecommunications service, the Commission can only require providers of IP telephony to contribute to universal service if it first finds that a contribution requirement would be in the public interest.¹⁸ The *a priori* application of the contribution requirement is neither necessary nor appropriate at this point.

CONCLUSION

Before the Commission extends the universal service contribution requirement to all providers of facilities-based broadband Internet access services, it must first determine whether such an extension is in the public interest. In doing so, the Commission should evaluate the current size of the USF, all potential contributors to the USF, the effect that requiring USF contributions from all facilities-based broadband Internet access services would have on the Commission's goal of promoting broadband deployment, whether potential contributors offer

¹⁶ *Id.* See also Comcast Comments at 17, n.43 (citing the United States General Accounting Office Report to the Ranking Minority Member, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, GAO-02-187, *Federal and State Universal Service Programs and Challenges to Funding* (2002), at 22; Information Technology Association of America Comments at 42 (describing Internet telephony as “niche” service).

¹⁷ See *Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd 11501, 11544 (1998) (“We do not believe . . . that it is appropriate to make any definitive pronouncements [on the legal status of phone-to-phone IP telephony] in the absence of a more complete record focused on individual service offerings.”).

¹⁸ See 47 U.S.C. § 254(d). For the reasons set forth above and in NCTA's original comments in this proceeding, the Commission lacks the basis for such a finding at this time.

public switched service or the functional equivalent, and the special circumstances facing providers of cable modem services.

Respectfully submitted,

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